

USDOL/OALJ Reporter

[*Henderson v. Tennessee Valley Authority*, 90-ERA-25 \(Sec'y Aug. 5, 1992\)](#)
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DATE: August 5, 1992
CASE NO. 90-ERA-25

IN THE MATTER OF

LARRY D. HENDERSON,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NO. 90-ERA-50

MICHAEL A. SMITH,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NO. 90-ERA-51

DEWEY RAY SMITH,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NO. 91-ERA-26

LARRY D. HENDERSON,

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COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NO. 91-ERA-5

MICHAEL A. SMITH,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NO. 91-ERA-6

DEWEY RAY SMITH,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NO. 91-ERA-43

MICHAEL A. SMITH,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

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CASE NO. 91-ERA-44

DEWEY RAY SMITH, JR.,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER APPROVING SETTLEMENTS AND
DISMISSING COMPLAINTS WITH PREJUDICE

Review of the records in the above-captioned cases, which arise under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988), indicates they were consolidated for review before the Office of Administrative Law Judges (OALJ). By Order of Consolidation, dated March 8, 1991, Deputy Chief Administrative Law Judge John M. Vittone, granted a motion to consolidate Case No. 91-ERA-26, with Case Nos. 90-ERA-25, 90-ERA-50, 90-ERA-51, 91-ERA-5, and 91-ERA-6, which were pending before Administrative Law Judge (ALJ) McCarthy.

On August 27, 1991, the ALJ issued a Recommended Decision for Summary Judgment and Order Dismissing Case Nos. 90-ERA-25, 90-ERA-50, and 90-ERA-51 (R.D. and O.), recommending dismissal based on res judicata and untimeliness. 1/ The ALJ specifically stated that the remaining cases were not dismissed at this time, but did not sever those consolidated cases over which OALJ retained jurisdiction, i.e. Case Nos. 91-ERA-5, 6, and 26. R.D. and O. at 5. On August 30, 1991, ALJ Vittone issued another Order of Consolidation granting a motion to consolidate Case Nos. 91-ERA-43 and 91-ERA-44 with the six previously consolidated cases.

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The ALJ's R.D. and O. issued in the above-captioned cases on August 27, is now before me for review. 29 C.F.R. § 24.6(b) (1991). By letter dated May 8, 1992, Complainant's counsel submitted a Joint Motion for Dismissal with an attached Memorandum of Understanding and Agreement, dated April 30, 1992, indicating that Complainant Larry D. Henderson agreed to a settlement of his complaints against TVA, and that the parties jointly requested dismissal of his complaints with prejudice.[2] The cases settled by this agreement are Case Nos. 90-ERA-25 and 91-ERA-26.

On June 25, 1992, Complainant's counsel submitted another Joint Motion for Dismissal, dated June 25, 1992, with two Memorandums of Understanding and Agreement attached, each dated June 24, 1992, for Complainants Dewey Ray Smith and Michael A. Smith respectively.

[3] See Exhibits 1, 2 attached to June 25 Motion for Dismissal. Additionally, a signed and dated copy of Complainant Henderson's Memorandum of Understanding and Agreement is attached to the June 25 Motion for Dismissal. See Exhibit 3.

Both of the Joint Motions request dismissal with prejudice of the

complaints in these consolidated cases, based on the fully executed settlement agreements entered into between Respondent and each Complainant, and submitted before me for review. Although the ALJ has not yet issued recommended decisions in Case Nos. 91-ERA-26, 91 ERA-5, 91-ERA-6, 91-ERA-43 and 91-ERA-44, I will not remand these consolidated cases to the OALJ in light of the particular circumstances herein. In the interest of expediency and administrative economy, I will review the settlement agreements and joint motions for dismissal submitted before me in each of these cases.

Because these requests for dismissal are based on settlement agreements entered into by the parties, I must review each of the agreements to determine whether the terms are a fair, adequate and reasonable settlement of these ERA complaints. 42 U.S.C. § 5851 (b) (2) (A); *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. United States Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v.*

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Georgia Power Co., Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

These settlement agreements may encompass matters arising under various laws only one of which is the ERA. As my authority over settlement agreements is limited to such statutes as are within my jurisdiction and is defined by the applicable statute, see *Goese v. Ebasco Services, Inc.*, Case No. 88-ERA-25, Sec. Order Approving Settlement and Dismissing Case, Dec. 8, 1988,; *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, and cases cited therein, I have limited my review to determining whether the terms of the agreements are fair, adequate and reasonable to settle Complainants' allegations that Respondent violated the ERA.

Upon review of the terms of each agreement and the record of each case, I find that the agreements are fair, adequate and reasonable, and therefore, I approve the agreements. [4]

Accordingly, the captioned cases are DISMISSED with prejudice, as requested in the Joint Motions for Dismissal.

SO ORDERED.

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LYNN MARTIN
Secretary of Labor

Washington, D.C.

[ENDNOTES]

1/ The R.D. and O. stated that appropriate orders of consolidation had been issued for the captioned consolidated cases, including Nos. 90-ERA-25, 90-ERA-50, 90-ERA-51, 91-ERA-26, 91-ERA-5, 91-ERA-6. The Order to consolidate Case Nos. 91-ERA-43 and 91-ERA-44 had not yet been issued.

2/ The copy of the Memorandum of Understanding and Agreement submitted with the May 8 letter was not signed by Complainant, but only by the parties' respective counsel.

3/ I note that the cover letter and Joint Motion of June 25, include Case Nos. 92-ERA-23 and 92-ERA-24 in the caption, indicating that these complaints are purportedly settled by the attached Memorandums of Understanding and Agreement for Complainants' Dewey Smith and Michael Smith. However, the records in these cases are not before me and I have received no other indication that these complaints are before the OALJ. Accordingly, this order is limited to the captioned consolidated cases herein discussed.

4/ Review of each agreement reveals that Paragraph 11 of Exhibit 1, Paragraph 10 of Exhibit 2, and Paragraph 5 of Exhibit 3, provide for confidentiality of the terms of Complainants' awards in each settlement agreement, except with family, attorneys, financial advisers and as required by legal process. I note that the parties' submissions become part of the record in each case and that the Freedom of Information Act, 5 U.S.C. § 552 (1988), requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. See *Hamka v. The Detroit Edison Co.*, Case No. 88-ERA-26, Sec. Order to Submit Attachments, Dec. 9, 1991, slip op. at 2, n.1.